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December 2, 2021

Matthew S. Borman  
Deputy Assistant Secretary of Commerce for  
Export Administration  
U.S. Department of Commerce  
Bureau of Industry and Security  
1401 Constitution Ave., NW  
Washington, DC 20230

**Re: Request for Extension of Time to Comment on the Interim Final Rule on  
Information Security Controls: Cybersecurity Items (REF: BIS-2020-0038;  
RIN 0694-AH56)**

Dear Deputy Assistant Secretary Borman:

Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) appreciates this opportunity to submit comments on the Interim Final Rule (“IFR”) on Information Security Controls: Cybersecurity Items published by the U.S. Department of Commerce, Bureau of Industry and Security (“BIS”) in the Federal Register on October 21, 2021. This comment, which Akin Gump submits on behalf of multiple clients affected by the IFR, respectfully requests that BIS extend the public comment period for the IFR until January 5, 2022. We believe that an extension is needed to afford our clients, and other cybersecurity industry stakeholders, additional time to study the practical and technical implications of the IFR on business operations and provide meaningful feedback to BIS on this new and complex legal regime.

By way of background, Akin Gump advises multiple clients on compliance with U.S. export controls regulated by BIS under the Export Administration Regulations (“EAR”), including many with substantial interests in the cybersecurity community, which will be affected by the IFR. Our clients appreciate the work that BIS has done to consider prior public comments and develop a tailored rule sensitive to the concerns of the cybersecurity community. With that said, our clients have expressed concern that they have not had sufficient time in the current rulemaking process to fully evaluate the effect of these rules on their cybersecurity operations.

This is not surprising, given that the new set of rules is highly complex—indeed the most complex in the EAR—as it incorporates several new and revised export control classifications, a very technical license exception with nested exceptions, newly defined terms, technical notes, and numerous accompanying FAQs. The new rule also interacts with and will impact the operation of classifications and exceptions in other portions of the EAR, including encryption

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and surreptitious listening controls. BIS is asking both industry and the public to consider all of these issues and provide insightful feedback in only 45 days, which is in itself surprising given that BIS has provided more time for comments on considerably less complex and less far-reaching regulatory changes in the recent past.

The public comment period for this rulemaking is also shorter than the comment period that industry received for the 2015 Advanced Notice of Proposed Rulemaking and falls during a holiday period when many subject matter experts—many of whom do not typically work on export control issues—are unavailable to comment on the implications of the rule. This has presented practical challenges for our clients to effectively study what—if any—cybersecurity tools fall under the new Category 4 and Category 5 classifications or whether the export, reexport, or transfer (in-country) of those tools to certain destinations require licensing or else may be eligible for License Exception ACE.

Given the significance of these rules, we respectfully request that BIS reopen the public comment period until January 5, 2022, which is two weeks before the rules go into effect on January 19, 2022. We believe that this additional time will provide us, and other stakeholders of the cybersecurity community, with a more meaningful opportunity to evaluate and comment on the potential impact of these rules before their effective date. BIS has recognized that complex rulemakings sometimes merit additional time for industry and the public to provide thoughtful comments. We also submit that a two-week window for BIS to consider comments before the effective date is both reasonable and consistent with past rulemakings.

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Akin Gump appreciates the opportunity to submit this extension request on behalf of our clients to BIS in connection with the IFR. For the reasons described above, we respectfully request that BIS extend the public comment period until January 5, 2022. Please do not hesitate to contact me at (202) 887-4051 or kwolf@akingump.com if you have any further inquiries.

*Kevin Wolf*

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